



**6560-50-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

**[FRL-9906-27-OARM]**

### **Availability of Guidance Documents; Permit Appeals; Citizens' Guide to the Environmental Appeals Board; Superfund Program; Consent Agreements**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability of guidance documents.

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**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is announcing the availability of four revised guidance documents: A Citizens' Guide to EPA's Environmental Appeals Board; The Environmental Appeals Board Practice Manual; Revised Guidance on Procedures for Submission and Review of CERCLA Section 106(b) Reimbursement Petitions; and Environmental Appeals Board Consent Agreement and Final Order Procedures. EPA's Environmental Appeals Board is the final decision maker on administrative appeals under all major environmental statutes the EPA administers. The EPA issued these guidance documents to provide guidance to citizens and practitioners on procedures and practice before the Board. The EPA revised the first two documents to reflect amendments to an EPA rule governing the Agency's permit appeal procedures, which EPA published in the Federal Register on January 25, 2013, and which became effective on March 26, 2013. The EPA revised the third document in February 2012 to streamline the procedures to petition for reimbursement of response costs under section 106(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The EPA has removed the fourth document as an appendix to the Board's Practice Manual, and it now is available as a freestanding document with minor revisions to make it easier for stakeholders to locate it.

**FOR FURTHER INFORMATION CONTACT:** Eurika Durr, Clerk of the Environmental Appeals Board, U.S. Environmental Protection Agency, Mail Code: 1103M, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460; telephone number: 202-233-0122; fax number: 202-233-0121; email address: durr.eurika@epa.gov.

## **SUPPLEMENTARY INFORMATION:**

### **I. General Information**

#### *A. Does this Action Apply to Me?*

This action is directed to the public in general, and may be of particular interest to anyone who seeks review by the Environmental Appeals Board of a permit decision issued pursuant to the Hazardous and Solid Waste Amendments to the Resource Conservation Recovery Act (RCRA), Underground Injection Control (UIC), National Pollutant Discharge Elimination System (NPDES), Prevention of Significant Deterioration (PSD), or other final permit decision under 40 CFR § 124.19 or who seeks reimbursement of response costs under section 106(b) of CERCLA. Because these guidance documents may be of interest to everyone, the Agency has not attempted to describe all the specific entities that may be interested in this action. If you have any questions regarding the applicability of this information to the particular petition, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

#### *B. How Can I Get Copies Of This Document and Other Related Information?*

Electronic copies of these four guidance documents and other related documents, including a copy of the recent rule revising part 124, are available at <http://www.epa.gov/eab/>. The public also may view these documents on site at the Environmental Appeals Board, U.S. Environmental Protection Agency, 1201 Constitution Avenue, NW, U.S. EPA East Building,

Room 3332, Washington, DC 20460. The Clerk of the Board's hours are 8:30 a.m. to 12 p.m. and 1 p.m. to 4:30 p.m., Monday through Friday, excluding federal holidays. The Clerk of the Board's telephone number is (202) 233-0122. For security reasons, advance notice is required to access the EPA building where the Board is located.

## **II. Background**

The EPA announces the availability of four guidance documents that the Agency's Environmental Appeals Board (Board) has issued: (1) A Citizens' Guide to EPA's Environmental Appeals Board (Citizens' Guide); (2) The Environmental Appeals Board Practice Manual (Practice Manual); (3) Revised Guidance on Procedures for Submission and Review of CERCLA Section 106(b) Reimbursement Petitions (CERCLA Section 106(b) Reimbursement Guidance); and (4) Environmental Appeals Board Consent Agreement and Final Order Procedures (CAFO Procedures). The EPA revised the Citizens' Guide and Practice Manual to reflect changes to the Agency's permit appeal procedures under 40 CFR § 124.19. The amendments to 40 CFR § 124.19 were published in the Federal Register on January 25, 2013, and became effective on March 26, 2013.

The Citizens' Guide provides general guidance about the Board and its procedures and is intended principally to assist stakeholders without legal training involved with matters pending before the Board. Because the Citizens' Guide contains information about the part 124 permit appeals process, the EPA revised this guidance document to reflect the recent changes to 40 CFR part 124.

The Practice Manual provides general descriptions of the regulatory framework for Board proceedings and provides guidance to litigants on matters related to practice before the Board. Because it too contains information about the part 124 permit appeals process, it also was revised

to reflect the recent changes to 40 CFR part 124.

The EPA issued the CERCLA Section 106(b) Reimbursement Guidance on February 23, 2012. Section 106(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 USC 9606(b), as amended by the Superfund Amendments and Reauthorization Act of 1986, allows any person who complies with an EPA order issued under section 106(a) of the statute to petition for reimbursement of the reasonable costs incurred in complying with the order, plus interest. Reimbursement is authorized if a petitioner can establish that it was not liable for response costs or that the Agency's selection of a response action was arbitrary or capricious or otherwise not in accordance with law. The CERCLA Section 106(b) Reimbursement Guidance details both the information a petitioner is expected to submit as part of a petition for reimbursement under CERCLA section 106(b) and the procedures the Board intends to follow in evaluating petitions. The EPA initially issued procedural guidance regarding the procedures for submission and review of petitions for reimbursement in June 1994. Based on its experience with reimbursement petitions after that date, the EPA issued revised CERCLA 106(b) guidance on October 9, 1996, and then again on November 10, 2004. The February 23, 2012 CERCLA Section 106(b) Reimbursement Guidance supersedes the previous CERCLA 106(b) guidance and is applicable to all petitions submitted on or after February 23, 2012.

The CAFO Procedures document was formerly included as an appendix to the Practice Manual. For convenience to practitioners, the EPA has removed the document from the Practice Manual and has made it available as its own separate document as of January 2014.

(Authority: Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 *et seq.*; Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. 1251 *et. seq.*; Safe Drinking Water Act, 42 U.S.C. 300f *et. seq.*; Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et. seq.*; Clean Air Act, 42 U.S.C. 7401 *et. seq.*; Comprehensive Environmental Response, Compensation,

and Liability Act, 42 U.S.C. 9601 *et seq.*; 40 CFR 1.25(e), 22.4, 124.19)

Dated: January 29, 2014.

Craig E. Hooks, Assistant Administrator, Office of Administration and Resources Management.

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